

# **Title 19 Chapter 1**

## **ENVIRONMENTAL QUALITY CODE**

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**19-1-101. Short title.**

This title is known as the "Environmental Quality Code."

**19-1-102. Purposes.**

The purpose of this title is to:

- (1) clarify the powers and duties of the Department of Environmental Quality in relationship to local health departments;
- (2) provide effective, coordinated management of state environmental concerns;
- (3) safeguard public health and quality of life by protecting and improving environmental quality while considering the benefits to public health, the impacts on economic development, property, wildlife, tourism, business, agriculture, forests, and other interests, and the costs to the public and to industry; and
- (4)
  - (a) strengthen local health departments' environmental programs;
  - (b) build consensus among the public, industry, and local governments in developing environmental protection goals; and
  - (c) appropriately balance the need for environmental protection with the need for economic and industrial development.

**19-1-103. Definitions.**

As used in this title:

- (1) "Department" means the Department of Environmental Quality.
- (2) "Executive director" means the executive director of the department appointed pursuant to Section 19-1-104.
- (3) "Local health department" means a local health department as defined in Title 26A, Chapter 1, Part 1.
- (4) "Person" means an individual, trust, firm, estate, company, corporation, partnership, association, state, state or federal agency or entity, municipality, commission, or political subdivision of a state.

**19-1-104. Creation of department -- Appointment of executive director.**

- (1) There is created within state government the Department of Environmental Quality. The department shall be administered by an executive director.
- (2) The executive director shall be appointed by the governor with the consent of the Senate and shall serve at the pleasure of the governor.
- (3) The executive director shall have demonstrated the necessary administrative and professional ability through education and experience to efficiently and effectively manage the department's affairs.
- (4) The Legislature shall fix the compensation of the executive director in accordance with Title 67, Chapter 22, State Officer Compensation.

**19-1-105. Divisions of department -- Control by division directors.**

- (1) The following divisions are created within the department:
  - (a) the Division of Air Quality, to administer Title 19, Chapter 2;
  - (b) the Division of Drinking Water, to administer Title 19, Chapter 4;
  - (c) the Division of Environmental Response and Remediation, to administer Title 19,

Chapter 6, Parts 3 and 4;

(d) the Division of Radiation, to administer Title 19, Chapter 3;  
(e) the Division of Solid and Hazardous Waste, to administer Title 19, Chapter 6, Parts 1, 2, and 5; and

(f) the Division of Water Quality, to administer Title 19, Chapter 5.

(2) Each division is under the immediate direction and control of a division director appointed by the executive director.

(3) Each division director shall possess the necessary administrative skills and training to adequately qualify him for his position. He shall have graduated from an accredited college or university with:

- (a) a four-year degree in physical or biological science or engineering;
  - (b) a related degree; or
  - (c) a degree in law.
- (4) Each director may be removed at the will of the executive director.

**19-1-106. Boards within department.**

(1) The following policymaking boards are created within the department:

- (a) the Air Quality Board, appointed under Section 19-2-103;
- (b) the Radiation Control Board, appointed under Section 19-3-103;
- (c) the Drinking Water Board, appointed under Section 19-4-103;
- (d) the Water Quality Board, appointed under Section 19-5-103; and
- (e) the Solid and Hazardous Waste Control Board, appointed under Section 19-6-103.

(2) The authority of the boards created in Subsection (1) is limited to the specific authority granted them under this title.

**19-1-108. Creation of Environmental Quality Restricted Account -- Purpose of restricted account -- Sources of funds -- Uses of funds.**

(1) There is created the Environmental Quality Restricted Account.

(2) The sources of monies for the restricted account are:

(a) radioactive waste disposal fees collected under Sections 19-3-106 and 19-3-106.4 and other fees collected under Subsection 19-3-104(5);

(b) hazardous waste disposal fees collected under Section 19-6-118;

(c) PCB waste disposal fees collected under Section 19-6-118.5;

(d) nonhazardous solid waste disposal fees collected under Section 19-6-119; and

(e) all investment income derived from money in the restricted account created in this section.

(3) In each fiscal year, the first \$500,000 collected from all waste disposal fees listed in Subsection (2), collectively, shall be deposited in the General Fund as free revenue. The balance shall be deposited in the restricted account created in this section.

(4) The Legislature may annually appropriate monies from the Environmental Quality Restricted Account to:

(a) the department for the costs of administering radiation control programs;

(b) the department for the costs of administering solid and hazardous waste programs;  
and

(c) the Hazardous Substances Mitigation Fund, up to \$400,000, for purposes set forth in

Title 19, Chapter 6, Part 3, Hazardous Substances Mitigation Act.

(5) In order to stabilize funding for the radiation control program and the solid and hazardous waste program, the Legislature shall in years of excess revenues reserve in the restricted account sufficient monies to meet departmental needs in years of projected shortages.

(6) The Legislature may not appropriate money from the General Fund to the department as a supplemental appropriation to cover the costs of the radiation control program and the solid and hazardous waste program in an amount exceeding 25% of the amount of waste disposal fees collected during the most recent prior fiscal year.

(7) The Legislature may annually appropriate not more than \$200,000 from this account to the Department of Public Safety, created in Section 53-1-103, to be used by that department solely for hazardous materials:

- (a) management training; and
- (b) response preparation and emergency response training.

(8) All funds appropriated under this part that are not expended at the end of the fiscal year lapse into the account created in Subsection (1).

(9) For fiscal year 1998-99, up to \$537,000 in the Environmental Quality Restricted Account may be appropriated by the Legislature to fund legislative priorities.

#### **19-1-201. Powers of department.**

(1) The department shall:

(a) enter into cooperative agreements with the Department of Health to delineate specific responsibilities to assure that assessment and management of risk to human health from the environment are properly administered;

(b) consult with the Department of Health and enter into cooperative agreements, as needed, to ensure efficient use of resources and effective response to potential health and safety threats from the environment, and to prevent gaps in protection from potential risks from the environment to specific individuals or population groups; and

(c) coordinate implementation of environmental programs to maximize efficient use of resources by developing, with local health departments, a Comprehensive Environmental Service Delivery Plan that:

(i) recognizes that the department and local health departments are the foundation for providing environmental health programs in the state;

(ii) delineates the responsibilities of the department and each local health department for the efficient delivery of environmental programs using federal, state, and local authorities, responsibilities, and resources;

(iii) provides for the delegation of authority and pass through of funding to local health departments for environmental programs, to the extent allowed by applicable law, identified in the plan, and requested by the local health department; and

(iv) is reviewed and updated annually.

(2) The department may:

(a) investigate matters affecting the environment;

(b) investigate and control matters affecting the public health when caused by environmental hazards;

(c) prepare, publish, and disseminate information to inform the public concerning issues involving environmental quality;

(d) establish and operate programs, as authorized by this title, necessary for protection of the environment and public health from environmental hazards;

(e) use local health departments in the delivery of environmental health programs to the extent provided by law;

(f) enter into contracts with local health departments or others to meet responsibilities established under this title;

(g) acquire real and personal property by purchase, gift, devise, and other lawful means;

(h) prepare and submit to the governor a proposed budget to be included in the budget submitted by the governor to the Legislature;

(i) (i) establish a schedule of fees that may be assessed for actions and services of the department according to the procedures and requirements of Section 63-38-3.2; and

(ii) in accordance with Section 63-38-3.2, all fees shall be reasonable, fair, and reflect the cost of services provided;

(j) prescribe by rule reasonable requirements not inconsistent with law relating to environmental quality for local health departments;

(k) perform the administrative functions of the boards established by Section 19-1-106, including the acceptance and administration of grants from the federal government and from other sources, public or private, to carry out the board's functions; and

(l) upon the request of any board or the executive secretary, provide professional, technical, and clerical staff and field and laboratory services, the extent of which are limited by the funds available to the department for the staff and services.

#### **19-1-202. Duties and powers of the executive director.**

(1) The executive director shall:

(a) administer and supervise the department;

(b) coordinate policies and program activities conducted through boards, divisions, and offices of the department;

(c) approve the proposed budget of each board, division, and office within the department;

(d) approve all applications for federal grants or assistance in support of any department program; and

(e) with the governor's specific, prior approval, expend funds appropriated by the Legislature necessary for participation by the state in any fund, property, or service provided by the federal government.

(2) The executive director may:

(a) issue orders to enforce state laws and rules established by the department except where the enforcement power is given to a board created under Section 19-1-106, unless the executive director finds that a condition exists which creates a clear and present hazard to the public health or the environment and which requires immediate action, and if the enforcement power is vested with a board created under Section 19-1-106, the executive director may with the concurrence of the governor order any person causing or contributing to the condition to reduce, mitigate, or eliminate the condition;

(b) with the approval of the governor, participate in the distribution, disbursement, or administration of any fund or service, advanced, offered, or contributed by the federal government for purposes consistent with the powers and duties of the department;

(c) accept and receive funds and gifts available from private and public groups for the purposes of promoting and protecting the public health and the environment and expend the funds as appropriated by the Legislature;

(d) make policies not inconsistent with law for the internal administration and government of the department, the conduct of its employees, and the custody, use, and preservation of the records, papers, books, documents, and property of the department;

(e) create advisory committees as necessary to assist in carrying out the provisions of this title;

(f) appoint division directors who may be removed at the will of the executive director and who shall be compensated in an amount fixed by the executive director;

(g) advise, consult, and cooperate with other agencies of the state, the federal government, other states and interstate agencies, affected groups, political subdivisions, and industries in carrying out the purposes of this title;

(h) consistent with Title 67, Chapter 19, Utah State Personnel Management Act, employ employees necessary to meet the requirements of this title;

(i) authorize any employee or representative of the division to conduct inspections as permitted in this title;

(j) encourage, participate in, or conduct any studies, investigations, research, and demonstrations relating to hazardous materials or substances releases necessary to meet the requirements of this title;

(k) collect and disseminate information about hazardous materials or substances releases; and

(l) review plans, specifications, or other data relating to hazardous substances releases as provided in this title.

#### **19-1-203. Representatives of department authorized to enter regulated premises.**

(1) Authorized representatives of the department, upon presentation of appropriate credentials, may enter at reasonable times upon the premises of properties regulated under this title to perform inspections to insure compliance with rules made by the department.

(2) The inspection authority provided in this section does not apply to chapters in this title which provide for specific inspection procedures and authority.

#### **19-1-204. Legal advice and representation for department.**

(1) The attorney general is the legal adviser for the department and the executive director and shall defend them in all actions and proceedings brought against either of them.

(2) The attorney general or the county attorney of the county in which a cause of action arises or a public offense occurs shall bring any civil or criminal action requested by the executive director or any board created in Section 19-1-106 to abate a condition which exists in violation of, or to prosecute for the violation of or for the enforcement of, the laws or standards, orders, and rules of the department.

#### **19-1-205. Assumption of responsibilities.**

The department assumes all the policymaking functions, regulatory and enforcement powers, rights, duties, and responsibilities of the Division of Environmental Health, the Air Conservation Committee, the Solid and Hazardous Waste Committee, the Utah Safe Drinking

Water Committee, and the Water Pollution Control Committee previously vested in the Department of Health and its executive director:

(1) including programs for individual wastewater disposal systems, liquid scavenger operations, and vault and earthen pit privies; but

(2) excluding all other sanitation programs, which shall be administered by the Department of Health.

**19-1-301. Adjudicative proceedings.**

The department and its boards shall comply with the procedures and requirements of Title 63, Chapter 46b, Administrative Procedures Act.

**19-1-302. Violation of laws and orders unlawful.**

It is unlawful for any person:

(1) to violate the provisions of the laws of this title or the terms of any order or rule issued under it; or

(2) to fail to remove or abate from private property under the person's control at his own expense within 48 hours, or such other reasonable time as the department determines, after being ordered to do so, any nuisance, source of filth, or other sanitation violation.

**19-1-303. Criminal and civil penalties -- Liability for violations.**

(1) (a) Any person who violates any provision of this title or lawful orders or rules adopted under this title by the department shall:

(i) in a civil proceeding be assessed a penalty not to exceed the sum of \$5,000; or

(ii) in a criminal proceeding:

(A) for the first violation, be guilty of a class B misdemeanor; and

(B) for a subsequent similar violation within two years, be guilty of a class A misdemeanor.

(b) In addition, a person is liable for any expense incurred by the department in removing or abating any violation.

(2) Assessment or conviction under this title does not relieve the person assessed or convicted from civil liability for any act which was also a violation of the public health laws.

(3) Each day of violation of this title or rules made by the department under it may be considered a separate violation.

(4) The enforcement procedures and penalties provided in Subsections (1) through (3) do not apply to chapters in this title which provide for other specific enforcement procedures and penalties.

(5) Unless otherwise specified in statute, the department shall deposit all civil penalties and fines imposed and collected under this title into the General Fund.

**19-1-304. Principal and branch offices of department.**

(1) The principal office of the department shall be in Salt Lake County.

(2) The department may establish branch offices at other places in the state to furnish comprehensive and effective environmental programs and to coordinate with and assist local health officers.

**19-1-305. Administrative enforcement proceedings - Tolling of limitation period.**

The issuance of an administrative enforcement notice of a violation or an order under Section 19-1-202, 19-2-110, 19-4-107, 19-6-404, 19-5-111, or 19-6-112, or issuance of a notice of agency action under Section 19-3-109 or 19-6-407 tolls the running of the period of limitation for commencement of a civil action brought to assess or collect a penalty until the date the notice of violation, order, or agency action becomes final under Title 63, Chapter 46b, Administrative Procedures Act, or for a period of three years, whichever occurs first.

**19-1-306. Records of the department.**

(1) Except as provided in this section, records of the department shall be subject to Title 63, Chapter 2, Government Records Access and Management Act.

(2) (a) The standards of the federal Freedom of Information Act, 5 U.S.C. Sec. 552, and not the standards of Subsections 63-2-304(1) and (2), shall govern access to records of the department for which business confidentiality has been claimed under Section 63-2-308, to the extent those records relate to a program:

- (i) that is delegated, authorized, or for which primacy has been granted to the state;
- (ii) for which the state is seeking delegation, authorization, or primacy; or
- (iii) under the federal Comprehensive Environmental Response, Compensation, and Liability Act.

(b) The regulation of the United States Environmental Protection Agency interpreting the federal Freedom of Information Act, as it appeared at 40 C.F.R. Part 2 on January 1, 1992, shall also apply to the records described in Subsection (1).

(3) (a) The department may, upon request, make trade secret and confidential business records available to the United States Environmental Protection Agency insofar as they relate to a delegated program, to a program for which the state is seeking delegation, or to a program under the federal Comprehensive Environmental Response, Compensation and Liability Act.

(b) In the event a record is released to the United States Environmental Protection Agency under Subsection (3)(a), the department shall convey any claim of confidentiality to the United States Environmental Protection Agency and shall notify the person who submitted the information of its release.

(4) Trade secret and confidential business records under Subsection (2) shall be managed as protected records under the Government Records Access and Management Act, and all provisions of that act shall apply except Subsections 63-2-304(1) and (2).

(5) Records obtained from the United States Environmental Protection Agency and requested by that agency to be kept confidential shall be managed as protected records under the Government Records Access and Management Act, and all provisions of that act shall apply except to the extent they conflict with this subsection.